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May 16, 1983

Mr. Richard A. Chevrefils, Director
New Hampshire Division of Welfare
Hazen Drive
Concord, New Hampshire 03301

Re: Adult Protective Services

Dear Mr. Chevrefils:

This is in response to your request of February 25, 1983, for advice concerning the respective responsibilities of the division of welfare, the office of ombudsman, and the division of public health services in the area of adult protective services. Your request for advice asks that this office delineate the responsibilities of each of these three agencies in an effort to clarify the jurisdiction of each agency in this area. However, existing law concerning the authorities of these agencies allows for overlapping jurisdiction. This office is therefore not able to precisely delineate the areas of responsibility for each agency, but we can advise you as to the general area of responsibility for each agency.

The responsibilities of the division of public health services under RSA Ch. 151 are to regulate hospitals and other medical or remedial care facilities and to assure that individuals who are patients at these facilities receive appropriate care and treatment. See RSA 151:1. The division of public health services' jurisdiction in this regard applies to any hospital or other facility, residence, private home, or other place however named, whether operated for profit or otherwise, which is operated, whether for consideration or otherwise, for the express or implied purpose of providing diagnosis or treatment, or medical, nursing, obstetrical or other remedial or



personal care or supervision or sheltered services for persons who are suffering from illness, injury, deformity, infirmity or other physical or mental handicap. See RSA 151:2 (Supp.). Simply put, the division of public health services has jurisdiction over any hospital, facility or residence which provides medical care or supervision to any individual. There are no age requirements with respect to the individuals who receive these services. The scope of the jurisdiction of the division of public health services is to provide regulation of these facilities through a system of licensing. The division of public health services is not given the specific responsibility to prevent the abuse or neglect of adults. I note that even though RSA 151:19, et seq. sets forth certain rights of nursing home patients, the division of public health services does not have specific enforcement authority in the event the nursing home "bill of rights" is violated. Enforcement of the statutory rights can, however, be sought by aggrieved individuals, who, pursuant to RSA 151:30 (Supp.), may file suit in superior court seeking equitable relief and damages. The division of public health services is limited to indirect enforcement of the statutory rights under RSA 151:7, I, which provides that the division of public health services may suspend or revoke a nursing home license for noncompliance with the provisions of Chapter 151, which include the nursing home bill of rights and abuse provisions provided under RSA 151:21 and 27.

Pursuant to RSA Ch. 161-D (Supp.), the division of welfare is given responsibility for the protection of incapacitated adults who are neglected, abused, or exploited. See RSA 161-D:1. The "adults" who are subject to the division's jurisdiction are defined under RSA 161-D:2, I as individuals who are 18 years or older who are incapacitated either physically or mentally to the extent that harm could result to the individual or others, or who is a person unable to manage his estate. The division of welfare is authorized to receive reports concerning neglect, abuse, or exploitation of such individuals, wherever they reside or are located. See RSA 161-D:3. Thus, unlike the division of public health services whose jurisdiction is limited to individuals who are in facilities described in RSA 151:2, and the ombudsman, whose jurisdiction is limited to individuals over age 60 who are in facilities described in RSA 167-A:21, V, the division of welfare must investigate abuse, neglect, or exploitation complaints of any incapacitated individual over 18 regardless of where that individual is located. I note that the division's investigative function in this regard is mandatory under RSA 161-D:3, II, which provides that the division shall make its investigation within three days of receipt of an oral report of abuse, neglect, or exploitation of an incapacitated adult. Generally, the remedies which the division may provide include the provision of protective services which are defined

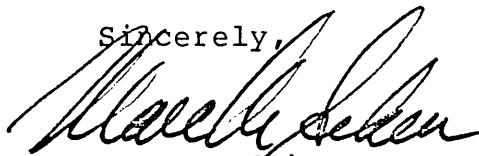
in RSA 161-D:2, III, including voluntary agreements or appropriate court orders to prevent neglect, abuse or exploitation of adults. Other protective services which may be provided by the division include but are not limited to supervision, guidance, counselling and, when necessary, assistance in securing of sanitary and nonhazardous living accommodations, and mental and physical examinations. Id. Also, in the course of its investigation of a report or suspicion of abuse, neglect, or exploitation, the division of welfare may, in the event that it is refused entrance to the place where the client is located, apply to the probate court for an order authorizing a police officer, probation officer or social worker to enter the premises in furtherance of the investigation. See RSA 161-D:5-a.

The office of ombudsman, which is established by RSA 167-A:21, et seq., also has limited but overlapping responsibilities in this area. In general, the office of ombudsman has the authority to investigate matters relating to individuals age 60 years or older who are the patients, residents or clients of a facility or institution where health or health-related services for the institutionalized elderly are offered and which is subject to regulation, visitation, inspection or supervision by any government agency. See RSA 167-A:21, I, IV, and V. The powers and duties of the ombudsman are described in RSA 167-A:25. These powers and duties include the responsibility to adopt regulations relative to soliciting, receiving, investigating, responding to and resolving complaints relative to patients, residents or clients of covered facilities, and after receipt of a complaint, the authority to investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare or civil or human rights of any patient, resident or client of a facility. RSA 167-A:25, II and III. The ombudsman may also be required to testify in any court concerning any civil or criminal matter which is directly related to the provision of protective services for patients, clients or residents. RSA 167-A:25, V. The ombudsman also has the authority to gain entrance to facilities in the course of his investigations, and, if permission to enter is refused, to apply to the superior court for an order authorizing entry. RSA 167-A:26, II. The ombudsman may also require the cooperation of any government agency to assist him in the exercise of his duties. RSA 167-A:28. Thus, for individuals over age 60 who reside in the specified facilities, the ombudsman has broader investigative authority than the division of welfare in that he is not limited to the investigation of abuse, neglect or exploitation of incapacitated adults. Similar to the division of welfare's responsibility to investigate under RSA Ch. 161-D, the ombudsman under RSA 167-A:25 is required to investigate complaints within his jurisdiction. Although the remedies which the ombudsman may

provide are not as specifically defined as are the protective services which the division of welfare may offer under RSA Ch. 161-D, the ombudsman does have the responsibility for receiving, servicing, investigating and resolving complaints or problems concerning certain health care facilities and for investigating administrative acts or omissions of any government facility or agency as defined in RSA 167-A:21, V and VI. See RSA 167-A:22. I note also that the ombudsman has limited responsibilities under RSA 151:28, I, to review and approve the application of organizations seeking designation as patients' personal representatives for the purpose of assuring compliance with the patients' bill of rights. If the organization so approved by the ombudsman has acted in a manner which is detrimental to the health or safety of a patient, the nursing home may file a complaint with the office of ombudsman for investigation. RSA 151:28, V. Under this statute, the nursing home is not required to make the reports; however, if a complaint is made, the office of ombudsman is required to make an investigation and to report its findings to the nursing home and the subject of the investigation.

Although the foregoing information may assist you in ascertaining the respective responsibilities of the three involved agencies, it is clear that existing legislation creates overlapping responsibilities and duties of the respective agencies. If you believe that the concurrent jurisdiction of these agencies has created unnecessary confusion over each agency's respective authority, the division may wish to clarify this through appropriate legislation. Should a specific issue of jurisdiction arise under existing law, I would, of course, be willing to respond in further detail.

Sincerely,



Marc R. Scheer
Assistant Attorney General
Division of Legal Counsel

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